***HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

+WRIT PETITION NO.16517 OF 1998

% 2nd July, 2007

 # Dodda Narasimhaiah.

…Petitioner

And

$ The District Collector, Anantapur and others.

…Respondents

! Counsel for the petitioner: Mr. O. Manohar Reddy.

^ Counsel for respondents : G.P. for Land Acquisition.

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> Head Note:

? Cases referred:

[1] 2002(2) ALT 118

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.16517 of 1998

Date: 02.07.2007

Between:

Dodda Narasimhaiah

....Petitioner

and

The District Collector, Anantapur and others

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.16517 of 1998

O R D E R:

The petitioner is the owner of agricultural land admeasuring Ac.2.40 cents in Survey No.499-5B and 519-1B of Ratnagiri Village of Rolla Mandal, Anantapur District. The District Collector, Anantapur, the first respondent herein, issued notification, dated 28.11.1997, under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') proposing to acquire the said land. The petitioner challenges the same, stating inter alia that he is a resident of Baddi Halli Village of Karnataka State and that he has not been served with any notice, at any stage of the proceedings. He further contends that there are suitable Government lands in the Village to provide house-sites and that the present acquisition is contrary to the guidelines issued by the Government in this regard. Several other contentions are also raised.

On behalf of the respondents, a counter-affidavit is filed. It is stated that the notice issued under Section 4(1) of the Act was published in the Gazette, in the locality, and in two newspapers as provided for under the Act. It is also stated that enquiry under Section 5-A of the Act was conducted and thereafter, declaration under Section 6 of the Act was published.

According to the respondents, award enquiry was held and ultimately, an award, dated 06.05.1998, was passed determining the compensation at Rs.57,888/-. It is alleged that the petitioner refused to receive the notice issued under Section 12(2) of the Act and in that view of the matter, the compensation could not be paid. They contend that once the award has been passed, the proceedings cannot be interfered with.

Shri O.Manoher Reddy, learned counsel for the petitioner, submits that even according to the respondents, the petitioner is a resident of Baddi Halli Village in the State of Karnataka and despite the same, no effort was made by them to serve notices upon him. He contends that the acquisition was resorted to, at the instance of some local pressure groups and that there are no bona fides in the matter.

Learned Government Pleader for Land Acquisition, on the other hand, submits that the petitioner refused to receive the notice issued under Section 5-A of the Act and the same was displayed in accordance with the relevant provisions, duly making necessary endorsements. So far as the award enquiry is concerned, the learned Government Pleader submits that the notices were not only displayed in the office of the Land Acquisition Officer and Mandal Revenue Officer, but also on the site, when the efforts to serve the same on the petitioner did not fructify. It is alleged that the petitioner refused to receive the amount of compensation.

Though the petitioner contends that the notification and declaration under Sections 4(1) and 6 of the Act are vitiated due to procedural lapses, this Court is not inclined to accept the same. Notification under Section 4(1) of the Act was published in the Gazette, displayed in the locality and notified in two newspapers as

required under the Act. This is one of the rare cases, where an enquiry under Section 5-A of the Act was conducted and thereafter, the declaration under Section 6 of the Act was published.

Award enquiry is another important step under the Act. Even if the notification and declaration under Sections 4 and 6 of the Act are valid, the obligation of the authorities to follow the procedure prescribed under the law does not cease. In **APSRTC v. Kamalakumari**[1], a Division Bench of this Court, to which I am a party, held that service of notice under Sections 9 and 10 of the Act is mandatory and non-compliance with the same would vitiate the proceedings. Reference was made to Section 45 of the Act, which prescribes the mode of service of notice.

In the instant case, the service of notice under Sections 9(1) and (3) of the Act was not effected, as required under the Act. In the counter-affidavit, the respondents stated as under:

> "The notice for Award enquiry in Form No. 9(1) and 9(3) and 10 were issued for publication and for service on the land owner directing him to appear for Award enquiry on 16-3-98 at Sub-Collector's Office, Penukonda. The notice was served on the Door of the landowner by the V.A.O, Rathnagiri. The landowner has not turned up for Award enquiry. The V.A.O., Rathnagiri appeared and reported that the both lands under acquisition belongs to Baddihalli Narsimhaiah S/o Late Chikkanna of Rathnagiri present at Baddi-halli Village of Karnataka State and compensation amount may be paid to him."

Even according to this averment, the petitioner is a resident of Baddi Halli Village of Karnataka State and it is not known as to how and on what basis, the notice was pasted on a door of the land owned by the

petitioner at Ratnagiri. The record discloses that a stick was erected in the acquired land, and the notice was tied to it. Such a course was held to be untenable. Therefore, the consequential award passed against the petitioner does not have any legs to stand.

It is true that this Court would be slow to interfere with the proceedings under the Land Acquisition Act, if an award is passed. Much, however, would depend upon the physical possession over the site. In case the possession of the land is taken and the award is passed, any procedural defect would not have the effect of vitiating the proceedings. If possession of the land continues to be with the owner and the award is found to have suffered any procedural infirmity, the relief cannot be denied to the affected party.

Non-payment or receipt of the compensation amount is another factor, which would have a direct bearing. If the owner of the land had received the compensation, the legal infirmity of the award cannot be taken note of. In the instant case, the petitioner did not receive the compensation. On account of the interim order granted by this Court, the possession of the land continues to be with the petitioner. Further at this length of time, the whole matter needs to be given a fresh look.

For the foregoing reasons, the writ petition is allowed, as prayed for. It is left open to the respondents to proceed with the acquisition of the land in question, if need still subsists. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

2nd JULY, 2007.

Note: L.R.Copy be marked.

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[1] 2002(2) ALT 118